

**From:** [LERS, EOIR \(EOIR\)](#)  
**To:** [LERS, EOIR \(EOIR\)](#); [All of Judges \(EOIR\)](#); [BIA BOARD MEMBERS \(EOIR\)](#); [BIA ATTORNEYS \(EOIR\)](#); [All of CLAD \(EOIR\)](#); [All of OCIJ JLC \(EOIR\)](#); [BIA TEAM JLC](#); [BIA TEAM P \(EOIR\)](#); [Alder Reid, Lauren \(EOIR\)](#); [Allen, Patricia M. \(EOIR\)](#); [Anderson, Jill \(EOIR\)](#); [Baptista, Christina \(EOIR\)](#); [Bauder, Melissa \(EOIR\)](#); [Berkeley, Nathan \(EOIR\)](#); [Brazill, Caitlin \(EOIR\)](#); [Burgie, Brea \(EOIR\)](#); [Burgus, Elizabeth \(EOIR\)](#); [Cicchini, Daniel \(EOIR\)](#); [Cowles, Jon \(EOIR\)](#); [Curry, Michelle \(EOIR\)](#); [Evans, Brianna \(EOIR\)](#); [Grodin, Edward \(EOIR\)](#); [Hartman, Alexander \(EOIR\)](#); [Kaplan, Matthew \(EOIR\)](#); [King, Jean \(EOIR\)](#); [Korniluk, Artur \(EOIR\)](#); [Lang, Steven \(EOIR\)](#); [Lovejoy, Erin \(EOIR\)](#); [Martinez, Casey L. \(EOIR\)](#); [Noferi, Mark \(EOIR\)](#); [O'Hara, Shelley M. \(EOIR\)](#); [Park, Jeannie \(EOIR\)](#); [Powell, Karen B. \(EOIR\)](#); [Ramirez, Sergio \(EOIR\)](#); [Rimmer, Phillip \(EOIR\)](#); [Robbins, Laura \(EOIR\)](#); [Rodrigues, Paul A. \(EOIR\)](#); [Rodriguez, Bernardo \(EOIR\)](#); [Rothwarf, Marta \(EOIR\)](#); [Sanders, John W. \(EOIR\)](#); [Schaaf, Joseph R. \(EOIR\)](#); [Smith, Terry \(EOIR\)](#); [Stutman, Robin M. \(EOIR\)](#); [Swanwick, Daniel \(EOIR\)](#); [Taufa, Elizabeth \(EOIR\)](#); [Vayo, Elizabeth \(EOIR\)](#)  
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**EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW**  
Office of Policy | Legal Education and  
Research Services Division

**Policy & Case Law Bulletin**  
July 13, 2018

**White House**

- [President Trump Issues Executive Order 13843: "Excepting Administrative Law Judges From the Competitive Service"](#)

On July 10, 2018, the President signed an Executive Order stating: "conditions of good administration make necessary an exception to the competitive hiring rules and examinations for the position of ALJ. These conditions include the need to provide agency heads with additional flexibility to assess prospective appointees without the limitations imposed by competitive examination and competitive service selection procedures. Placing the position of ALJ in the excepted service will mitigate concerns about undue limitations on the selection of ALJs, reduce the likelihood of successful Appointments Clause challenges, and forestall litigation in which such concerns have been or might be raised." On the same day, [OPM issued guidance regarding the Executive Order](#).

**Federal Agencies**

DOJ

- [OCAHO Issues Decision in United States v. Technical Marine Maintenance Texas, LLC, et al.](#)  
— EOIR

13 OCAHO no. 1312 (2018)

OCAHO finds liability against the respondents based on "their failure to comply with judicial directives and repeated failure to comply with discovery obligations pursuant to 28 C.F.R. § 68.23(c)(5)." Adverse inferences were justified under the "flagrant bad faith and callous disregard of responsibility" standard. Consequently, the respondents were "found to have engaged in a pattern or practice of document abuse based on citizenship status in violation of 8 U.S.C. § 1324b(a)(6) by requesting more or different documents from non-U.S. citizens than are required to prove identity and work eligibility."

## [Virtual Law Library Weekly Update — EOIR](#)

This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

### DHS

- [USCIS Issues Policy Memorandum on Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual \(AFM\) Chapter 10.5\(a\), Chapter 10.5\(b\)](#)

On July 13, 2018, USCIS issued a policy memorandum (PM), effective September 11, 2018, that provides guidance to "USCIS adjudicators regarding the discretion to deny an application, petition, or request without first issuing a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) if initial evidence is not submitted or if the evidence in the record does not establish eligibility." This PM applies to all USCIS employees and "all applications, petitions, and requests received after the effective date."

- [USCIS Issues Policy Memorandum on Guidance for Processing Reasonable Fear, Credible Fear, Asylum, and Refugee Claims in Accordance with Matter of A-B-](#)

On July 11, 2018, USCIS issued a PM that provides guidance to "USCIS officers for determining whether a petitioner is eligible for asylum or refugee status in light of the Attorney General's decision in [Matter of A-B-](#). . . . This PM applies to and shall be used to guide determinations by all USCIS employees. USCIS personnel are directed to ensure consistent application of the reasoning in Matter of A-B- in reasonable fear, credible fear, asylum, and refugee adjudications."

- [DHS Announces Implementation of Visa Sanctions on Laos, Burma](#)

On July 10, 2018, "DHS announced, in coordination with the State Department, the implementation of visa sanctions on Burma and Laos due to lack of cooperation in accepting their citizens who have been ordered removed from the United States."

- [DHS Extends the Designation of Yemen for Temporary Protected Status](#)

On July 5, 2018, DHS announced that it extended the designation of Yemen for TPS for an additional 18 months, through March 3, 2020.

- [CBP Updates Statistics on Southwest Border Migration Through June FY2018](#)

"June saw a decline in Southwest Border apprehensions and inadmissibles by 18 percent compared to May. This decline follows the overall downward trend for this time of year as apprehensions and inadmissibles along the Southwest Border have declined from May to June."

### DOS

- [DOS Posts August 2018 Visa Bulletin](#)

The Visa Bulletin includes a summary of available immigrant numbers, visa availability, and scheduled expiration of visa categories.

- [Notice in the Matter of the Designation of al-Ashtar Brigades as FTO and SDGT](#)

On July 11, 2018, notice was published in the Federal Register that the Secretary of State designated al-Ashtar Brigades (AAB), also known as Saraya al-Ashtar, as a Foreign Terrorist Organization (FTO) pursuant to the Act, and a Specially Designated Global Terrorist (SDGT) in accordance with Executive Order 13224.

- [Notice Regarding Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended](#)

On July 6, 2018, notice was published in the Federal Register that "the Department of State finalizes without change a final rule establishing that a passport and a visa is required of a British, French, or Netherlands national, or of a national of Antigua, Barbados, Grenada, Jamaica, or Trinidad and Tobago, who has residence in British, French, or

Netherlands territory located in the adjacent islands of the Caribbean area, or has residence in Antigua, Barbados, Grenada, Jamaica, or Trinidad and Tobago, if the alien is proceeding to the United States as an agricultural worker.” “As a consequence of the Department of Homeland Security (DHS) revising its regulations in parallel with State Department actions, temporary workers from these countries will continue to need H–2A visas to enter the United States.”

HHS

- [Trump Administration Completes Reunification for Eligible Children Under Age 5](#)

On July 12, 2018, HHS, DHS, and DOJ announced jointly that “[u]nder order of the U.S. District Court for the Southern District of California, the departments of Health and Human Services (HHS), Homeland Security (DHS), and Justice (DOJ) have been reunifying alien minors under 5 years old who are currently in the custody of HHS with adults who have been in the custody of DHS.” Of the “103 children under age 5 covered by the court case . . . 57 children ha[d] been reunified as of 7 a.m. EST on July 12; [and] 46 children were acknowledged by the court to be ineligible for reunification or determined by HHS, DHS, and DOJ to be ineligible under court-approved criteria.”

#### Fourth Circuit

- [United States v. Moriello](#)

No. 1:17-po-6 (W.D.N.C. July 12, 2018) (unpublished) (Attorney Conduct)

On July 12, 2018, a U.S. Magistrate Judge found an immigration attorney guilty of two petty offense counts: (1) failing “to comply with the lawful direction of . . . an immigration judge, while [in Charlotte Immigration Court], in that the defendant continued to use a cellular phone in. an immigration courtroom despite the command of the presiding immigration judge, transmitted through a private security officer, that the defendant cease such use within the courtroom. All in violation of 41 C.F.R. § 102-74.365, 41 C.F.R. § 102-74.385, and 41 C.F.R. § 102-74.450;” and (2) “imped[ing] and disrupt[ing] the performance of official duties by government employees while [in Charlotte Immigration Court], in that the defendant created a disturbance by refusing commands from an immigration judge and a private security officer to cease the use of a cellular phone within that judge’s courtroom during a sealed asylum proceeding. All in violation of 41 C.F.R. § 102-74.365, 41 C.F.R. § 102-74.390, and 41 C.F.R. § 102-74.450.” The defendant has the right to appeal her petty offense conviction to U.S. District Court.

#### Seventh Circuit

- [Cortina-Chavez v. Sessions](#)

No. 17-2116, 2018 WL 3301627 (7th Cir. July 5, 2018) (Motions)

The Seventh Circuit dismissed the PFR to the extent it sought review of the Board’s denial of sua sponte reopening, and denied the remainder of the PFR, holding that the Board “did not abuse its discretion in denying the motion to reconsider when Cortina-Chavez challenged only one of the two independent and adequate reasons the Board gave for summarily dismissing his appeal.

- [Sanchez v. Sessions](#)

No. 17-1673, 2018 WL 3285780 (7th Cir. July 5, 2018) (Motions)

The Seventh Circuit granted the PFR and remanded, holding that the Board applied an incorrect prejudice standard when it denied the motion to reopen based on an ineffective assistance of counsel claim. The court determined that Sanchez was not required “to show . . . a probability of more than 50 percent that the outcome of the removal proceeding would have been favorable to Sanchez but for his counsel’s alleged missteps. .

. . Sanchez needed only to establish that he would have had a reasonable chance of prevailing had his counsel provided him with competent representation.”

### Ninth Circuit

- [Singh v. Sessions](#)

No. 15-73696, 2018 WL 3372494 (9th Cir. July 11, 2018) (unpublished) (Asylum-General)

The Ninth Circuit denied the PFR in part, concluding that substantial evidence supports the agency’s conclusion that Singh can safely and reasonably relocate to another part of India. The court also granted the PFR in part, holding that the agency abused its discretion by “replicat[ing] its relocation analysis instead of focusing on whether Singh had ‘demonstrated compelling reasons for being unwilling or unable to return to the country arising out of the severity of [his] past persecution.’ [8 C.F.R.] § 1208.13(b)(1)(iii)(A) (emphasis added).”

- [Batsukh v. Sessions](#)

No. 14-74005, 2018 WL 3369281 (9th Cir. July 10, 2018) (unpublished) (Asylum-General)

The Ninth Circuit granted the PFR and remanded, holding that the Board “erred when it denied the [minor] daughter’s asylum application on the basis that it was time barred,” because “the time bar does not apply to an asylum application filed by a minor, even when the minor is accompanied by a parent and the minor’s claim is derivative of his parent’s claim.” (citing *El Himri v. Ashcroft*, 378 F.3d 932 (9th Cir. 2004)).

- [Madrid-Farfan v. Sessions](#)

No. 13-73048, 2018 WL 3341774 (9th Cir. July 9, 2018) (unpublished) (Controlled Substances)

The Ninth Circuit granted the PFR, holding that AZ § 13-3408 is not a categorical controlled substance offense. “The parties agree that AZ § 13-3408 is overbroad because it criminalizes substances that are not on the federal controlled substance lists.” The court determined that AZ § 13-3408 is not divisible because “a jury could disagree about the type of drug a defendant possessed and still convict.”

- [Yi v. Sessions](#)

No. 17-71217, 2018 WL 3322588 (9th Cir. July 6, 2018) (unpublished) (Waiver)

The Ninth Circuit denied the PFR, holding that substantial evidence supports the Board’s conclusion that Yi did not demonstrate that she entered into a good faith marriage for purposes of obtaining a waiver under section 216(c)(4)(C) of the Act.

### Tenth Circuit

- [A.B. v. Sessions](#)

No. 17-9554, 2018 WL 3342273 (10th Cir. July 6, 2018) (unpublished) (Motions)

The Tenth Circuit granted the PFR, holding that the Board abused its discretion in denying a motion to reopen based on changed country conditions because it did not assess and consider A.B.’s evidence that the persecution of religious minorities had substantially worsened. The court determined that “[a]lthough there is evidence that religious minorities in Bangladesh have always been at risk of some level of discrimination and violence, nothing in the record disproves Petitioner’s voluminous evidence that the level of violence and persecution has increased substantially since he filed his application for immigration relief in 2005.”